IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.2611 of 2006
To
FIRST APPEAL No.2634 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

SPECIAL LAQ OFFICER - Appellant
Versus
CHAUDHARI PRATAPBHAI HASISANGBHAI & ORS. - Respondents

==========

Appearance :
MR SS SHAH, GP for Appellant in FA Nos.2611 to 2616/2006 ***AND***
MS KRINA P CALLA, AGP for Appellant in FA Nos.2617 to 2622/2006 ***AND***
MR KD PANDYA, AGP for Appellant in FA Nos.2623 to 2628/2006 ***AND***
MS TANUJA N KACHCHHI, AGP for Appellant in FA Nos.2629 to 2634 of 2006
MR AMIT C NANAVATI for original claimants.
None for Respondent No.2.

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 02/12/2006

COMMON ORAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

These appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated November 22, 2004 rendered by the learned Joint District Judge, 4th Fast Track Court, Patan, in Land Acquisition Reference Case Nos.1116 of 2002 to 1139 of 2002 by which the claimants have been awarded additional compensation at the rate of Rs.20.00 per square metre for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs.4.50 paise per square metre by his award dated November 2, 1998.

2. The Executive Engineer, Narmada Project, Main Canal Division No.20, Patan, proposed to the State Government to acquire the lands of Village: Brahmanwada, Taluka: Chanasma, District: Patan, for the public purpose of construction of Canal under Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of Village: Brahmanwada were likely to be needed for the public purpose of construction of Canal under Narmada

Project. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on February 29, 1996. The land-owners were thereafter served with the notices as required by Section 4(1) of the Act. The land-owners opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of Village: Brahmanwada specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on July 31, 1996. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.30/- per square metre. However, having regard to the materials placed before him, the Special Land

Acquisition Officer, by his award dated November 2, 1998, offered compensation to the claimants at the rate of Rs.4.50 paise per square metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Patan, where they were registered as Land Acquisition Reference Case Nos.1116 of 2002 to 1139 of 2002.

3. On behalf of the claimants, witness, Mr.Narsinhbhai Bababhai Chaudhary, was examined at Exhibit 14. Apart from stating that the lands acquired were highly fertile and that each claimant was earning net profit of Rs.25,000/- to Rs.35,000/- from the sale of agricultural produces such as; millet, cotton, *juvar, til,* etc., the witness produced two previous awards rendered by the

Reference Court in support of the claim for enhanced compensation made by the claimants. The first previous award related to the lands of this very village. It was produced at Exhibit 11. The second award related to the lands of adjoining Village: Khorsam. It was produced at Exhibit 12. It was mentioned by this witness that the lands, which were previously acquired from this very village, were similar to the lands acquired from the same village in the instant case. It was also asserted by the said witness that the lands previously acquired from the adjoining Village: Khorsam were also similar in all respects to the lands acquired in the instant case. Though this witness was cross-examined on behalf of the appellants, nothing substantial could be elicited.

4. On behalf of the appellants, two witnesses were examined, i.e.; (1) Mr.Baleshkumar Akhabhai Asari at Exhibit 19; and (2) Mr.Yogendrakumar Jawaharlal Gupta at Exhibit 22. Mr.Asari in his testimony stated that the claimants were growing crops of millet, *juvar,* cumin-seed, wheat, etc. on

the acquired lands. The witness further mentioned that Village: Brahmanwada was at a distance of 10 Kilometres from the Taluka Headquarters. According to this witness, on the basis of extracts indicating sale price of the lands in the last five years, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.4.50 paise per square metre, which was just. In his cross-examination, the witness admitted that he had no personal knowledge regarding the acquisition proceedings initiated for acquiring the lands in the instant case and that he was deposing before the Court on the basis of official records available. Mr.Gupta in his testimony recorded at Exhibit 22, mentioned that the compensation offered by the Special Land Acquisition Officer to the claimants was just and that the claimants were not entitled to enhanced compensation. In his cross-examination, the witness stated that the lands, which were acquired earlier from Village: Brahmanwada for construction of Road, were of inferior quality in comparison to the lands acquired in the instant case.

5. On the basis of the evidence adduced by the parties, the Reference Court was of the opinion that the previous awards produced by the claimants at Exhibits 11 & 12 furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that as far as Exhibit 11 is concerned, notification under Section 4(1) of the Act was published in the official gazette on May 10, 1984 whereas notification issued under Section 4(1) of the Act for acquiring the lands of Village: Khorsam was published in the official gazette on December 19, 1992 and in the instant case, notification under Section 4(1) of the Act was published in the official gazette on February 29, 1996, as a result of which, the claimants were entitled to benefit of reasonable rise in price of the lands at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.20.00 per square metre, giving rise to these appeals.

6. This Court has heard Mr.S.S.Shah, learned

Government Pleader for the appellants, and Mr.Amit C. Nanavati, learned advocate for the original claimant(s) in each appeal at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties.

7. Though it was claimed by the witness for the claimants that each claimant was earning net income of Rs.25,000/- to Rs.35,000/- per *vigha* per year from the sale of agricultural produces, the said assertion could not be made good. However, the assertion made by the said witness that the lands acquired were highly fertile and that the claimants were able to raise different crops, such as; millet, cotton, *til, juvar,* etc. stands firmly established. Even Mr.Gupta, who was examined by the appellants, also admitted, in terms, that the lands, which were previously acquired from this village for the construction of road were inferior in quality to the lands acquired in the instant case. The record does not indicate that the claimants had claimed enhanced compensation either on

the basis of comparable sale instances or on the basis of yield. What was relied upon by the claimants was two previous awards of the Reference Court. One related to the lands of this very village whereas another related to the lands of adjoining Village: Khorsam. Exhibit 11 indicates that the lands of Village: Brahmanwada, Taluka: Chansama, District: Mehsana, were acquired for the public purpose of construction of Chansama-Brahmanwada-Maniyari Road pursuant to the publication of notification issued under Section 4(1) of the Act in the official gazette on May 10, 1984. Therein, the Special Land Acquisition Officer, by his award dated December 20, 1986, had offered compensation to the claimants at the rate of Rs.3.20 paise per square metre for irrigated lands and Rs.1.44 paise per square metre for non-irrigated lands. Feeling aggrieved, the claimants had sought references. Accordingly, the references were made to the District Court, Mehsana (prior to creation of new district of Patan), which were registered as Land Acquisition Reference Case Nos.1087 to 1106 of 1990. The Reference Court by judgment and award dated March 18, 1995, in all

awarded compensation to the claimants at the rate of Rs.10/- per square metre. Exhibit 12, which is previous award of the Reference Court relating to the lands of adjoining Village: Khorsam, indicates that the lands from the said village were acquired for the purpose of construction of Canal under the Narmada Project pursuant to the publication of notification issued under Section 4(1) of the Act in the official gazette on December 19, 1992. Therein, the Special Land Acquisition Officer by his award dated August 31, 1994, had offered compensation to the claimants at the rate of Rs.5.10 paise per square metre. Feeling aggrieved, the claimants had sought references. Accordingly, the references were made to the District Court, Mehsana, where they were registered as Land Acquisition Reference Case Nos.106 of 1996 to 123 of 1996. The Reference Court in those cases awarded additional compensation to the claimants at the rate of Rs.11.90 paise per square metre by judgment and award dated November 14, 2000.

8. Mr.Amit C. Nanavati, learned advocate for the original claimants, has stated at the Bar that

the judgments and awards produced at Exhibits 11 and 12 have been confirmed by the High Court. This statement could not be controverted by the learned counsel for the appellants. The contention raised on behalf of the claimants that Exhibit 12, which is the previous award of the Reference Court relating to the lands of adjoining Village: Khorsam should be taken into consideration by this Court while determining the market value of the lands acquired in the instant case, cannot be accepted for the simple reason that the previous award of the Reference Court relating to the lands of this very village is available on record of the case. It is well-settled that the previous award of the Reference Court relating to the lands of a particular village, which has attained finality, can be taken into consideration as a good guidance for the purpose of determining the market value of similar lands acquired from that very village subsequently. Therefore, Exhibit 11, which is the previous award of the Reference Court relating to the lands of this very village, will have to be taken into consideration for the purpose of determining the market value of the lands acquired in the instant

case. On the basis of that award, the claimants would be entitled to get compensation at the rate of Rs.10/- per square metre. However, in the previous case, the notification issued under Section 4(1) of the Act was published on May 10, 1984 whereas in the instant case notification under Section 4(1) of the Act was published on February 29, 1996 and, thus, there is a time-gap of about 12 years between the publication of two notifications issued under Section 4(1) of the Act. It is well-settled that when there is time-gap between publication of the notifications issued under Section 4(1) of the Act, the claimants should be granted benefit of rise in price of the lands at the rate of 10% per annum. If rise in price of the lands at the rate of 10% per annum is granted to the claimants, the compensation payable to the claimants would be Rs.22/- per square metre and not Rs.24.50 paise per square metre as held by the Reference Court. Therefore, the appeals will have to be accepted in part.

For the foregoing reasons, the appeals partly succeed. The common judgment and award dated

November 22, 2004 rendered by the learned Joint District Judge & 4th Fast Track Court, Patan, in Land Acquisition Reference Case No.1116 of 2002 to 1139 of 2002 awarding compensation to the claimants at the rate of Rs.24.50 paise per square metre is hereby modified and it is held that in all the claimants would be entitled to compensation at the rate of Rs.22/- per square metre for their acquired lands. Other benefits granted to the claimants in the impugned judgment are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

Rajendra